

### Attachment 3

#### Connect Oregon Dedicated Intermodal Facility Projects

#### Oregon Transportation Commission Decision Framework and Considerations

April, 2019

The Oregon Transportation Commission (OTC) will use a three-step decision-making process for determining which, if any, intermodal facility project plans to approve. Each proposal will be considered independently and on its own merits through Steps 1 and 2. The Step 3 analysis will help inform OTC's final decision for any project plan that passes the first two Steps, including choosing between the two Mid-Willamette Valley proposals should both reach this final Step.

- The Step 1 decision will assess the likelihood of receiving rail service. Any or all of the projects may pass this decision point.
- Step 2 will determine whether each specific project proposal merits the type and level of investment provided under HB 2017 based on a number of factors. Any or all of the projects may pass this decision point.
- Step 3 will determine whether the OTC will approve each project. No more than one proposal for each facility may pass this decision point.

The intent is for the OTC to complete all three decision Steps at their May meeting and render a final decision then. Importantly, a decision to accept a specific project plan does not guarantee or require full funding at the project's outset. Instead, the OTC anticipates that the approved project(s) will be subject to a grant agreement that will outline several successive project milestones for the project sponsor to complete in order to receive additional levels of funding.

Moreover, the following decision framework does not preclude any OTC member from including additional considerations and factors at each step of the process. Nor does this decision framework imply or require a specific order of priority or weighting of any of the considerations. While this decision framework provides several objective considerations, the ultimate decision will be at the discretion and subjective introspection of all the information available to each respective OTC member.

#### **Step 1 Decision Considerations:**

The goal of the step 1 analysis is to ascertain which project sponsors can demonstrate a strong likelihood of receiving rail service that supports the sponsor's overall rail operational plan.

The OTC, through ODOT staff, submitted a set of questions to all three project sponsors on March 14, 2019. These questions are intended to help provide clarity and direction around potentially selecting a specific project plan to move forward. The OTC will use the responses from the project sponsors as follows as part of their decision-making process:

- **Did the project sponsor provide the requested information and verification as required from the appropriate rail entity(ies)?** If not, the OTC should consider removing the specific project sponsor from further consideration.
- **If the project sponsor provided the requested information to the rail entity(ies), does the OTC find that the project sponsor has demonstrated a clear, reasonable, and likely path towards approval of service by the appropriate rail entity(ies)?** If not, the OTC should consider removing the specific project sponsor from further consideration.

These Step 1 considerations are generally pass/fail. However, the OTC reserves its right to use subjectivity with any and all of these considerations as appropriate. This means that a project sponsor may have provided the documentation, but the OTC can still choose to use these considerations to remove any specific project proposal from consideration based upon the quality of the response or based upon guidance and feedback from ODOT's independent third party reviewer or ODOT/OBDD staff as appropriate. The OTC and ODOT will utilize the other information obtained through the March 14 questions to help inform subsequent decision steps as well as to help inform key milestones that can be incorporated into any approved grant agreement.

### **Step 2 Decision Considerations:**

For each project proposal that the OTC passes through the Step 1 Decision Considerations, the OTC will evaluate the proposal using the following Step 2 Decision Considerations:

- Based upon the information provided by the project sponsor in its original project proposal submitted on Sept. 27, 2018, subsequent responses from project sponsors to questions from the Tioga Group, materials provided and presented to the OTC at its Feb. 21, 2019 meeting, and materials submitted in response to ODOT's March 14 questions, **does the OTC find that the sponsor's project proposal—**
  - **Has a reasonable likelihood of success?**
  - **Has the reasonable potential to provide an overall benefit to the freight transportation system in Oregon?**
  - **Has the reasonable potential to provide an overall positive economic benefit to Oregon?**
  - **Has demonstrated a reasonable business case worthy of the investment of public funds?**

The purpose of these Step 2 Decision Considerations is to determine whether each project proposal has provided reasonable business case justification to merit the type and level of investment called out in HB 2017. If the OTC finds that any specific project proposal fails to meet this standard, it should remove that proposal and project sponsor from further consideration. Note that the Step 2 Decision Considerations above are not meant to be exclusive, nor are they weighted in level of importance. The OTC reserves the right to exercise its judgement and expertise to account for other considerations or in applying potential weighting. Any project proposal that passes this decision consideration step will move to the Step 3 Decision Considerations.

### **Step 3 Decision Considerations**

Any proposals that the OTC passes through both the Steps 1 and 2 Decision Considerations will be evaluated through the following Step 3 Decision Considerations:

- **Project readiness and timelines for service agreements**
- **Transportation and economic benefits to Oregon from the facility**
- **Potential economic catalyst for additional growth and investment**
- **Brownfield vs. greenfield development**
- **Risk of rail operator non-service in the future**
- **Transportation impacts to existing infrastructure**

The purpose of the Step 3 Decision Considerations is to help the OTC make a final decision to accept a specific project plan as per statute and rule in order for ODOT to enter into a design/construction grant agreement. As such, and depending on which (if any) of the proposals pass through Steps 1 and 2, the Step 3 Decision Considerations will help the OTC decide whether to approve the Treasure Valley project proposal and which, if either, of the two Mid-Willamette Valley proposals should be approved. As with the Step 2 considerations, this list is not meant to be exclusive or weighted in level of importance. The OTC reserves the right to exercise its judgment and expertise to account for other considerations or in applying potential weighting. ODOT staff will prepare a Step 3 Decision Considerations matrix to assist the OTC in evaluating these considerations.

### **Milestones and Stage Gates in Project Agreements**

Upon the OTC's decision to approve any specific project plan, ODOT will begin negotiations with the successful project sponsor to develop a design and construction grant agreement that will include clear and specific milestones to help minimize risk. These milestones will be developed from information provided by the project sponsors, the rail roads, and advice from ODOT/OBDD staff, DOJ, and the Tioga Group. Some of the milestones may require a project sponsor to provide updates and reports to the OTC seeking OTC action to release funding for the next milestone.